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ABSTRACT

Increasingly, the operation of family day care homes in communities throughout the country is being jeopardized by restrictive local zoning requirements specifying uses of property. The majority of providers operate in areas where they are not specifically permitted "by right" or "by special exception," doing so at risk of being challenged or closed down if existing laws are enforced. A community that seeks to include home day care in local zoning statutes may do so in a number of ways, including: (1) prohibiting all use other than residential; (2) requiring a variance (the cost of which may be prohibitive for a day care provider); and (3) allowing home day care as an accepted use of residential property. Providers, backed by their state or local family day care association, are fighting back, and recently, state legislatures have passed laws in 14 states that preempt a community's right to restrict family day care. Providers and advocacy groups in a number of other states are seeking similar legislation. Meanwhile, the zoning battles continue at the expense of children and families who need quality, affordable and accessible day care, even though many of the grounds on which neighbors and communities object to family day care operation are, in fact, myths. (HTH)

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BARRIERS TO HOME DAY CARE: ZONING RESTRICTIONS BLOCK OPERATION OF FAMILY DAY CARE HOMES

With increased frequency, the operation of family day care homes in communities throughout the country is being jeopardized by restrictive local zoning requirements. At issue are the rights of providers to operate day care programs in their homes in residential neighborhoods. Other residents, concerned about noise, traffic activity, and property values may claim that home day care is a commercial business and should not be carried out in a residential area.

Family day care (or family child care) is the number one home business (Entrepreneur Magazine, Winter, 1990). Unfortunately, as the public becomes more aware of family day care and as providers themselves become more vocal, the battle between providers and community becomes more heated. In most communities, zoning regulations were enacted more than a generation ago when "dad went to work" and "mom stayed home to care for the house and children." Nationally, an estimated 1.5 million women work as family day care providers in their homes, providing care to 6 - 8 million children. Family day care is the most preferred form of out-of-home child care for infants and toddlers by parents and child development specialists.

Despite the fact that all 50 states and the District of Columbia regulate some family day care homes, either through required or voluntary regulation, the overwhelming majority of providers nationwide are still unregulated (as much as 80%). This includes both providers who are legally exempt from regulation in their state or who operate illegally.

In addition to state regulations, providers often find themselves subjected

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to restrictive local zoning requirements, which are in conflict with the state regulations. Such zoning regulations may prohibit altogether the operation of any "commercial" business in a residential area. Communities that have never specifically addressed the issue of home day care as a business can either prohibit the operation or refuse to grant a "special exception" if a complaint is filed against the provider. Many providers are forced to close their business when this happens.

Zoning laws specify uses of property. The majority of providers operate in areas where they are not specifically permitted "by right" or "by special exception," doing so at risk of being challenged or closed down if existing laws are enforced. If a property use requires a "special exception" or "variance," a hearing is usually required and certain conditions must be met to preserve the desired characteristics of the neighborhood. A "conditional use permit" may also be issued, and a fee and/or annual renewal of the permit required.

While a zoning hearing may have the appearance of being a rather simple procedure, in reality it can be a very intimidating experience to family day care providers who are unfamiliar with the hearing process. And to make matters worse, having a zoning hearing (which often entails an application fee) does not mean the provider will be given the "special exception" or "variance", after spending the money and going through the process. Therefore, rather than appear before a public body, many providers simply prefer to operate in the shadows or underground, taking the risk that their business will go unnoticed or be ignored.

Nationally, most providers on average make less than minimum wage ($1.35/hr in 1991). Fee for permits to operate a day care home can be prohibitive for providers. Permit fees may run as much as $3,000 per year, leaving providers with little choice but to cease operating.

A community that seeks to include home day care in local zoning statutes may do so in a number of ways. It may:

- o Prohibit all use other than residential occupancy and make no variance available.
- o Require a variance for any use other than residential.
- o Define home care specifically as "family day care" and include in that definition the maximum number of children, and require a variance.
- o Define home care specifically as "family day care" and include in that definition the maximum number of children, and permit "by right" or "by special exception."
- o Include family day care in the definition of "allowable home occupations" and permit it wherever home occupations are permitted.
- o Define home care specifically as "family day care" and include in that definition the maximum number of children, and permit "as accepted use of residential property."

A survey conducted by The Children's Foundation in 1980 indicated that in many communities significant barriers stand in the way of operating family day care in single-family residential areas. Unfortunately, in 1993, these survey results are still true. In addition, providers now may have homeowner and condominium association covenants which also restrict family day care businesses. The most common problems cited were:

- o No use other than residential occupancy is permitted.
- o A variance or special exceptions is required which is difficult to get due to:
  - -- high permit fee, site plan fee, or hearing transcript fee.
  - -- a requirement that a lawyer be involved in the hearing process.
  - -- fire safety, landscaping or parking space requirements which are difficult to meet, and/or

-- a requirement that all neighbors agree to the variance.

o The community has developed child care standards that are difficult to meet and that conflict with state requirements. (Some city councils have discretion over the hours of operation or the number of children a provider may serve.)

The Foundation averages several calls a week from providers somewhere in the country who are having zoning problems. Often lawsuits are initiated by disgruntled neighbors angered by noise, a perceived increase in traffic, or what they feel is a disturbing precedent. Older people, usually retirees with their own children grown and gone, are frequently the strongest opponents of family day care homes in their communities. They don't understand what family day care is and how needed it is for the support and economic stability of today's families and for the welfare of young children.

Ironically, zoning battles are being waged at a time when increased public awareness and an enhanced professional image have brought greater visibility to the home day care field. It also comes at a time when the need for quality, available day care in this country has never been greater. Providers have been fighting long and hard to combat the "babysitting" stereotype, and be recognized for the important role they have in the care and education of young children. However, providers find themselves before a zoning board or in court defending their right to operate a family day care business in a residential area, often having to say, "This isn't a business - just babysitting."

Providers, backed by their state or local family day care association, are fighting back. Parents who desperately need these services are supporting the providers' efforts. In some areas they have persuaded the local zoning board or the local city or township council to permit family day care after simply

explaining what it is and how important it is to the community. In others, providers have successfully challenged zoning restrictions by organizing community support and working through the hearing process. In a few instances, providers have been successful in getting the question of allowing family day care as "a permitted use" on a local referendum ballot. The last resort is going through the court system where legal challenges are made to local zoning prohibitions; most often the decision has gone in favor of the provider. This method is very expensive and time consuming.

Recently State Legislatures have passed laws in 14 states which pre-empt a community's right to restrict family day care. This statewide legislation makes family day care an "accepted use of residential property." Providers and advocacy groups in a number of other states are seeking similar legislation. Although state laws which supersede local zoning ordinances are the most effective means of addressing the problem, it requires a large effort and statewide action to get such legislation enacted. In the meantime, the zoning battles continue at the expense of children and families who need quality, affordable and easily accessible day care.

In addition to zoning barriers, family day care providers may find themselves in violation of local homeowner and condominium association covenants. Only Maryland has addressed this in their statewide pre-emption law.

Here are several myths and facts about family day care:

- **The increased traffic generated by the operation of a family day care home will spoil the quiet neighborhood.** In most neighborhoods today, so many of the residents work outside the home, the increase in cars in the neighborhood is minimal. Also, parents generally drop off and pick up their children in a staggered manner, not all arriving at the same time.

- **Parking will become a problem because of parents picking up their children will park in front of the houses on the street.** Providers can easily have a parking plan and policy in operation and request the parents to adhere to it.

- **The noise of children playing outside at the family day care home disrupts the peace and quiet of the neighborhood.** In the average residential neighborhood, there is nothing more traditional or typical than the sounds of children playing. Lawn mowers from contracted lawn services make far more noise.

- **Family day care homes lower the property values in the neighborhood.** In this economic time when the majority of the residents of a neighborhood work outside the home, the family day care provider may be the only "watchdogs" for that neighborhood. Family day care providers are homeowners just as interested in keeping up property values as any other resident.

- **Family day care homes are not needed; day care centers care for all the children in the community.** In today's economy it takes two working parents to maintain the same level of life that their parents did a generation ago and twenty-five percent of all families of the 1990's are single parent families. Day care is a vital and necessary part of the stability of family life. As the most prevalent form of out-of-home child care, family day care is the choice of most parents and recommended by child development specialists for infants and toddlers.

For more information on Zoning Barriers, refer to FAMILY DAY CARE ZONING ADVOCACY GUIDE, published by The Child Care Law Center, 22 Second Street, 5th Floor, San Francisco, CA 94105, or contact The Children's Foundation.

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